

**Janet Napolitano**  
Governor

**Todd F. Lang**  
Executive Director



**Marcia J. Busching**  
Chair

**Kathleen S. Detrick**  
**Ermila Jolley**  
**Tracey A. Bardorf**  
**Gary Scaramazzo**  
Commissioners

**State of Arizona**  
**Citizens Clean Elections Commission**

1616 W. Adams - Suite 110 - Phoenix, Arizona 85007 - Tel (602) 364-3477 - Fax (602) 364-3487 - [www.azcleanelections.gov](http://www.azcleanelections.gov)

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**PROBABLE CAUSE RECOMMENDATION**

To: Commissioners

From: L. Gene Lemon, External Investigative Consultant

Date: October 11, 2005

Subject: MUR # 04-0043 – Peggy Toomey Hammann

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This shall affirm that I intend to proceed with my September 30, 2005, probable cause recommendation. Each of you and the Respondent has been furnished with a copy of my letter/brief which contains the recommendation, the Respondent has not filed any brief in response, and this completes the procedures specified by A.A.C. R2-20-214.

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Peggy Toomey Hammann  
4005 Lake Mary Road, #18  
Flagstaff, AZ 86001

RE: CCEC MUR #04-0043 – Peggy Toomey Hammann

Dear Ms. Hammann:

I am writing in reference to the Commission's investigation and reason to believe finding of May 26, 2005, that you have violated the general election spending limit for participating candidates set by the Citizens Clean Elections Act ("Act") found in A.R.S. Sec. 16-941(A)(4), violated the Act's requirement found in A.R.S. Sec. 16-948(D) that monies in a participating candidate's account shall not be used to pay fines or civil penalties, and failed to comply with the campaign finance reporting requirements of A.R.S. Title 16, Chapter 6. Pursuant to A.A.C. R2-20-214 this letter shall serve as the brief setting forth my position on the legal and factual issues in the case and contains my recommendations that the Commission should find probable cause to believe that violations of the Act as enumerated above occurred. As the civil penalty for the violations, I will recommend that the Commission fix the amount at \$17,520.00 pursuant to A.R.S. Sect. 16-942 (A) and (B).

Promptly after its May 26 action, the Commission notified you by Federal Express of its finding, specifying the sections of the Arizona statutes believed to have been violated and clearly identifying the facts supporting the findings, and included its compliance order. In the period allowed, you have not complied, you have not provided any explanation (you did request more time to comply with the reporting requirements, which I granted, but you remain out of compliance), and you have made no proposal for any settlement of this matter.

**A. Probable Cause Finding**

The Commission's reasons to believe the enumerated violations of the Act have not been answered, let alone refuted. I recommend that the Commission now find that probable cause exists to believe the three alleged violations actually occurred. The alleged violations specifically are as follows:

1. On October 28, 2004, Respondent wrote a check to KJJJ for \$152.00. The check returned due to insufficient funds in her campaign account, indicating that Respondent overspent her general election spending limit in violation of A.R.S. Sec. 16-941(A)(4). In addition, Respondent wrote a check to herself for \$50.00 on September 2, 2004 that was returned due to insufficient funds in her campaign account, again indicating that Respondent overspent her general election spending limit in violation of A.R.S. Sec. 16-941(A)(4).
2. On October 12, 2004, Respondent wrote a check to the Secretary of State in the amount of \$50.00 to pay a late filing fee. Pursuant to Sec. 16-948(D), monies in a participating candidate's account shall not be used to pay fines or civil penalties. There is probable cause to believe a violation of the Act occurred.
3. On November 1, 2004, Respondent received matching funds in the amount of \$528.34. Respondent neither reported receipt of the matching funds nor reported how that money was spent, in violation of the reporting requirements of A.R.S. Sec. 16-913 and A.A.C. R2-20-109.

## **B. Civil Penalties**

Pursuant to A.R.S. Sec. 16-942(A), the civil penalty for a violation of an expenditure limit by a participating candidate shall be ten times the amount by which the expenditures exceed the limit. The expenditure limit was exceeded by the \$152.00 of radio service from KJJJ obtained by the campaign but not paid for, there being no funds remaining in the campaign account. I therefore recommend a civil penalty of \$1,520.00 for this violation. The expenditure limit was exceeded by the \$50.00 for reimbursement to the Respondent, there being no funds remaining in the campaign account. I therefore recommend a civil penalty of \$500.00 for this violation. Also, the expenditure of \$50.00 from the campaign account to pay the penalty assessed by the Secretary of State against the campaign exceeded the zero limit on such expenditures, and I will recommend a civil penalty of \$500.00 for this violation.

Pursuant to A.R.S. Sec. 16-942(B), the civil penalty for a violation by a candidate of any reporting requirement imposed by Chapter 6 of Title 16 of the Arizona Revised Statutes is \$110.00 per day for candidates for the legislature. Your failure to comply with reporting requirements, which continues, would result in a very large civil penalty but for the Commission's rule found in A.A.C. R2-20-222 which puts a cap on penalties at \$10,000.00 unless the violation is knowing and willful in which case the cap is \$15,000.00. Your actions in filing required campaign finance reports through the Pre-General Report and then ceasing reporting activity falls into the latter category, and I will recommend a civil penalty for the reporting violation of \$15,000.00.

The aggregate amount of civil penalties recommended is \$17,520.00.

### **C. Briefing Procedures**

Within five days from receipt of this letter from the External Investigative Consultant, the Respondent may file a brief with the Commission setting forth the Respondent's position on the factual and legal issues of the case pursuant to A.A.C. R2-20-214(C). After reviewing the Respondent's brief, the External Investigative Consultant shall promptly advise the Commission in writing whether he intends to proceed with the recommendation or to withdraw the recommendation from Commission consideration.

Dated this 30th day of September, 2005

By: \_\_\_\_\_

L. Gene Lemon  
External Investigative Consultant